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E-FILED

Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

JAN - 6 2012

Part of  
Public Record

Re: Docket No. AB 33 (Sub-No. 277X), Union Pacific Railroad Company --  
Abandonment Exemption -- In Lafourche Parish, LA.  
Docket No. AB 318 (Sub-No. 7X), Louisiana & Delta Railroad, Inc. --  
Discontinuance of Service Exemption -- In Lafourche Parish, LA

Dear Ms. Brown:

BNSF Railway Company ("BNSF") hereby briefly replies to the letter filed by Union Pacific Railroad Company ("UP") on December 23, 2011, in the above-referenced proceedings, responding to BNSF's reply filed on December 6, 2011.<sup>1</sup>

First, contrary to UP's assertion, BNSF did not assert an ownership interest in the former SP branches and spurs located along the 50/50 Line ("Branches"). BNSF simply noted that it had Surface Transportation Board authority to serve present and future customers located on the Branches.

Second, UP correctly notes that UP's and BNSF's rights to serve customers on the 50/50 Line and the Branches are subject to the existing rights of other railroads. Contrary to UP's allegation, however, UP's and BNSF's rights are in addition to the rights of the other railroads and not subservient to those rights. Therefore, BNSF does not have to wait until Louisiana & Delta Railroad, Inc. ("L&DRR"), consummates its discontinuance in Docket No. AB 318 (Sub-No. 7X) before BNSF may serve customers on the Lockport Branch. In any event, this issue was rendered moot when L&DRR consummated the discontinuance as of December 31, 2011.

Third, UP erroneously contends that the September 1, 2000 agreement ("Agreement") between BNSF and UP precludes BNSF from accessing future customers on the Lockport Branch until

<sup>1</sup> UP's letter filing constitutes an impermissible reply to a reply. 49 C.F.R. § 1104.13(c). BNSF, however, does not seek to strike the letter filing. Rather, BNSF simply seeks to correct certain erroneous statements of fact and conclusions of law.

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L&DRR discontinues its operations over that Branch. Section 2.1(a) of the Agreement expressly provides that UP and BNSF "shall each have the right to serve all present and future industries or facilities originating or terminating traffic on the Joint Trackage." Joint Trackage is defined to include all Branches.

Fourth, UP confuses the well-established case law governing future traffic projections in abandonment and adverse abandonment proceeding with the equally well-established case law governing the consummation of an abandonment by the landlord where a tenant carrier has not discontinued its operations over the line.

BNSF noted the existence of a potential shipper locating on the Lockport Branch not because such a showing is necessary to preclude UP from consummating its abandonment but merely to point out that BNSF is not acting as an obstructionist to UP's abandonment.

It is well settled that the landlord railroad may not consummate its abandonment until all tenant railroads have discontinued their operations regardless of whether the tenant carriers are actively serving customers on the line. *See, e.g.,* STB Docket No. AB-57 (Sub-No. 56X), *Soo Line Railroad Company D/B/A Canadian Pacific Railway Company – Abandonment Exemption – In Bottineau, Rolette, and Towner Counties, ND* (not printed), served January 10, 2010; STB Docket No. AB-55 (Sub-No. 552X) *CSX Transportation, Inc. – Abandonment Exemption – In Raleigh County, WV* (not printed) served November 25, 1998; Docket No. AB-33 (Sub-No. 77X), *Union Pacific Railroad Company – Abandonment Exemption – In Solano County, CA* (not printed), served December 15, 1992.

Thus, any attempt by UP to consummate its abandonment in Docket No. AB 33 (Sub-No. 277X) must be rejected until such time as BNSF discontinues its operating authority over the line.

Sincerely,



Courtney Biery Estes  
General Attorney

cc: All parties of record

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of January, 2012, I caused a copy of the forgoing letter to be served on all parties of record by first class mail.

  
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Courtney Biery Estes